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Guatemala and Spain: draft resolution

Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs

The General Assembly,

Reaffirming the purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights,[1]

Recalling the 2030 Agenda for Sustainable Development,[2] and recognizing its integrated and indivisible nature,

Reaffirming the commitments by Member States to take immediate and effective measures to eradicate all forms of trafficking in persons,

Recalling its resolutions 59/156 of 20 December 2004, entitled "Preventing, combating and punishing trafficking in human organs", 71/322 of 8 September 2017, entitled "Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs", and 72/195 of 19 December 2017, entitled "Improving the coordination of efforts against trafficking in persons", as well as Commission on Crime Prevention and Criminal Justice resolutions 23/2 of 16 May 2014[3] and 25/1 of 27 May 2016[4] on preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal,

Reaffirming the United Nations Convention against Transnational Organized Crime[5] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons,

[1] Resolution 217 A (III).
[2] Resolution 70/1.
[3] See *Official Records of the Economic and Social Council, 2014, Supplement No. 10* (E/2014/30), chap. I, sect. D.
[4] Ibid., *2016, Supplement No. 10* (E/2016/30), chap. I, sect. D.
[5] United Nations, *Treaty Series*, vol. 2225, No. 39574.

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Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,[6]

Recognizing the need for a multidisciplinary approach, based on respect for all human rights, to combating trafficking in human organs and trafficking in persons for the purpose of organ removal,

Taking note with appreciation of the World Health Organization guiding principles on human cell, tissue and organ transplantation, endorsed by the sixty-third World Health Assembly in its resolution 63.22 of 21 May 2010,[7]

Taking note of the report of the Special Rapporteur of the Human Rights Council on trafficking in persons, especially women and children, on the issue of trafficking in persons for the removal of organs submitted to the General Assembly at its sixty-eighth session,[8]

Recalling the joint study by the United Nations and the Council of Europe, entitled "Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs", the United Nations Office on Drugs and Crime assessment toolkit, entitled "Trafficking in persons for the purpose of organ removal", and the study by the Office of the United Nations High Commissioner for Human Rights, entitled "Trafficking in persons for the removal of organs: advancing a human rights approach and engaging human rights mechanisms", and welcoming the Declaration of Istanbul on Organ Trafficking and Transplant Tourism, as updated in 2018,

Taking note with appreciation of the Council of Europe Convention against Trafficking in Human Organs, as the first international legally binding document that provides a list of activities that constitute trafficking in human organs and includes provisions to prevent and combat this crime, to protect its victims and to promote international cooperation in the fight against this crime, whose scope is usually transnational,

Reaffirming that trafficking in persons for the purpose of organ removal and trafficking in organs constitute crimes that violate and impair the enjoyment of human rights and fundamental freedoms, and stressing that it is essential to place the protection of all human rights at the centre of measures to prevent and end trafficking,

Recognizing that, although differences exist between the crimes of trafficking in human organs and trafficking in persons for the purpose of organ removal, both crimes are related to the shortage of human organs available for transplantation and to social and economic difficulties that make people vulnerable, and that prevention of and response to both crimes must be undertaken in an effective and coordinated manner,

Considering that the whole process of donation and transplantation of human organs should be an established part of national health services provided to the public, that the process should take place under conditions aimed at the protection of the rights of donors and recipients of organs and that health-care systems should be instrumental in ensuring such conditions,

Considering also that the commercial trade in human organs is prohibited in almost all Member States and that both trafficking in persons for the purpose of organ removal and trafficking in human organs have a profound impact on the health both of those who sell their organs and of victims of trafficking in persons for the purpose

[6] Ibid., vol. 2237, No. 39574.

[7] See World Health Organization, document WHA63/2010/REC/1.

[8] See A/68/256.

of organ removal, as well as on recipients of organs obtained in such circumstances, who may fall victim to deception, and that both crimes may represent a threat to public health and may, in some cases, affect the integrity and the functioning of ethically sound transplant systems,

Alarmed at the potential growth of exploitation, by criminal groups, of human needs, poverty and destitution for the purpose of trafficking in human organs and trafficking in persons for the purpose of the removal of organs, and at the criminal groups taking advantage of people in vulnerable situations, such as refugees, as a growing phenomenon,

Noting the need to protect individuals from exploitation by traffickers in human organs, including by providing potential victims, who are usually the most vulnerable members of society, with relevant information, as well as the need to investigate, prosecute and punish those traffickers and to provide assistance to victims,

Emphasizing the importance of respecting and protecting the rights of victims of trafficking in persons for the purpose of organ removal and, when recognized in national legislation, addressing the vulnerability of victims of trafficking in human organs and providing assistance, as applicable,

Convinced of the need to strengthen local, regional and international cooperation for the effective prevention and combating of trafficking in persons for the purpose of organ removal and trafficking in human organs wherever they occur, and determined to prevent the provision of safe haven to those who participate in or profit from transnational organized crime and to prosecute such persons for the crimes that they commit,

1. *Urges* Member States to prevent and combat trafficking in persons for organ removal and trafficking in human organs, in accordance with their obligations under international and national law, and to uphold accountability through measures that may include preventing and, in accordance with relevant national legislation, investigating, prosecuting and punishing trafficking in persons for the purpose of organ removal as well as trafficking in human organs;

2. *Urges* Member States that have not yet done so to ratify or accede to, as a matter of priority, the United Nations Convention against Transnational Organized Crime[5] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,[6] taking into consideration the central role of those instruments in the fight against trafficking in persons, and urges States parties to those instruments to implement them fully and effectively;

3. *Urges* Member States to consider adopting the following measures related to organ transplantation, in accordance with the fundamental principles of their domestic legal systems and national legislation and in line with the World Health Organization guiding principles on human cell, tissue and organ transplantation:

(a) Strengthening legislative frameworks, including by reviewing, developing or amending them, as appropriate, to prevent and combat trafficking in persons for organ removal and trafficking in human organs, which must include the criminalization of these practices and provisions to ensure effective, proportionate and dissuasive sanctions, including criminal and non-criminal monetary sanctions;

(b) Adopting appropriate legislative measures necessary to guarantee that the donation of organs is guided by clinical criteria and ethical norms, based on the donors' informed and voluntary consent, as an altruistic act, performed without any monetary payment or other reward of monetary value, for the living donor or the

family of the deceased donor, or any other person or entity, which does not preclude reimbursing reasonable and verifiable expenses incurred by donors;

(c) Ensuring equitable access to human organ transplantation, on the basis of non-discrimination, and increasing public awareness and understanding of the benefits resulting from the voluntary non-remunerated provision of organs from deceased and living donors, and of the physical, psychological and social risks to individuals and communities caused by trafficking in organs and trafficking in persons for the purpose of the removal of organs, as well as transplant tourism;

(d) Ensuring that the removal of human organs from both deceased and living persons, as well as the transplantation of human organs, take place exclusively in centres specifically authorized for such activities by the relevant national health authorities and are not performed outside the framework of domestic transplantation systems or in situations where the transplantation is performed in breach of the guiding principles or national transplantation laws or rules;

(e) Developing and strengthening regulatory oversight of the medical facilities and medical professionals involved in the recovery and transplantation of human organs, including through control measures, such as periodic audits;

(f) Setting specific processes and criteria for the authorization of every organ removal and transplantation procedure;

(g) Establishing and developing registries, with due regard to professional confidentiality and personal data protection in respect of both donors and recipients, that include information regarding each organ recovery and transplantation procedure and outcomes for living donors and recipients of organs, with the purpose of ensuring the transparency of practices and the traceability, quality and safety of human organs;

(h) Implementing an identification system able to trace each donation and each of the organs and recipients associated with it;

(i) Promoting the voluntary contribution of periodic information to international registers for organ donation and transplantation activity, such as the Global Observatory on Donation and Transplantation developed in collaboration with the World Health Organization;

(j) Providing long-term medical and psychosocial care for both living donors and recipients;

4. *Encourages* Member States, international organizations and civil society to ensure sustained efforts in terms of information and awareness-raising activities aimed at fostering a positive attitude in society regarding posthumous donation, as a gesture of altruism, solidarity and community participation, and warning of the risks of organ removal when performed in the context of trafficking, in particular among potential victims, such as vulnerable groups that are at risk of social exclusion;

5. *Encourages* Member States to exchange experience in and information on preventing, combating and punishing trafficking in human organs and trafficking in persons for organ removal, as well as on the protection of victims, as appropriate;

6. *Also encourages* Member States to progress towards self-sufficiency in the transplantation of human organs by developing preventive strategies aimed at decreasing the incidence of diseases treatable through transplantation, and at ethically increasing the availability of human organs for transplantation purposes, with special attention to maximizing donations from deceased donors and to protecting the health and welfare of living donors;

7. *Further encourages* Member States to develop effective and properly resourced organ donation and transplantation systems and provide technical assistance for their implementation in requesting countries;

8. *Encourages* Member States to provide training and capacity-building for law enforcement and border control officials, as well as for health-care professionals, on identifying potential cases, including on the Internet, of organ trafficking and trafficking in persons for the purpose of organ removal and on the need to certify the origin of organs to be transplanted and to report suspected or confirmed illegal practices;

9. *Also encourages* Member States to strengthen international cooperation in responding to the crimes of trafficking in persons for the purpose of organ removal and trafficking in human organs, as provided for in relevant and applicable law, including domestic and international law;

10. *Urges* Member States to further develop, in their domestic legislation, ways of protecting victims of trafficking in persons for the purpose of organ removal and, as appropriate, ways of addressing the vulnerability of those individuals who sell their organs, including by considering the following measures:

(a) Adopting all measures, including legal measures, necessary to protect the rights and interests of victims in the course of all phases of criminal prosecution and judicial proceedings;

(b) Facilitating the access of victims of trafficking in persons for the purpose of organ removal and, as appropriate, of those individuals who sell their organs, to appropriate information related to their case, as well as to the necessary protection of their health and other rights that are at stake, including their right to anonymity;

(c) Providing medical and psychosocial care to victims in the short, medium and long term;

(d) Ensuring that domestic legal systems contain measures that offer victims the possibility of obtaining effective compensation for the damage suffered;

(e) Promoting the creation of governmental mechanisms and providing support to specialized non-governmental organizations, as appropriate, to address the needs of groups at risk of organ trafficking and trafficking in persons for the purpose of organ removal, in order to facilitate the provision of holistic and early care to potential or actual victims of those crimes, and ensuring that all support measures are non-discriminatory, gender-, age- and culturally sensitive and comply with their international human rights obligations and national legislation;

11. *Welcomes* the establishment of the Task Force on Donation and Transplantation of Human Organs and Tissues of the World Health Organization to advise on and support the World Health Organization in disseminating and implementing the guiding principles on human cell, tissue and organ transplantation in order to ensure ethical practices in organ and tissue donation and transplantation worldwide;

12. *Requests* the World Health Organization, in collaboration with the United Nations Office on Drugs and Crime and the Office of the United Nations High Commissioner for Human Rights, to continue to develop an orderly, ethical and acceptable framework for the acquisition and transplantation of human organs for therapeutic purposes, including the establishment of a global governance mechanism for the efficient coordination of efforts in combating organ trafficking and trafficking in persons for the purpose of organ removal, including transplantation registries;

13. *Requests* the United Nations Office on Drugs and Crime to engage in a dialogue with members of the Inter-Agency Coordination Group against Trafficking in Persons and other relevant intergovernmental international organizations, in particular the World Health Organization, in close consultation with Member States, so as to enable the Office to improve data collection and analysis on instances of trafficking in persons for the purpose of organ removal and relevant prosecutions, and to promote research among diverse fields, such as the medical and health management fields, as well as on the part of the anti-trafficking community, while bearing in mind that data on trafficking in persons for the purpose of organ removal are being gathered for the *Global Report on Trafficking in Persons*, in accordance with the provisions set out in General Assembly resolution 70/179 of 17 December 2015, taking into consideration the existing resources;

14. *Also requests* the United Nations Office on Drugs and Crime, in collaboration with other entities of the United Nations system, including the World Health Organization, to continue to provide capacity-building and technical assistance to States, upon request, to assist them in strengthening national capacities to effectively prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs;

15. *Invites* Member States and other donors to provide extrabudgetary resources to the Task Force on Donation and Transplantation of Human Organs and Tissues and to the transplantation programme of the World Health Organization to disseminate and implement the principles endorsed by World Health Assembly to address the ethical aspects of organ transplantation, such as voluntary and unpaid donation, universal access to transplant services, the availability, safety and quality of the procedures, national accountability through the development of sustainable transplant systems and the achievement of national self-sufficiency in order to stop organ trafficking and trafficking in persons for the purpose of organ removal;

16. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the General Assembly at its seventy-fourth session, within existing resources;

17. *Decides* to continue its consideration of the question at its seventy-fifth session, under the item entitled "Crime prevention and criminal justice".